

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

ELLIS AND KATHY SAAD,

Defendants.

No. 3-94-0014
JUDGE ECHOLS

ORDER

Presently pending before this Court is the United States' Motion for an Order in Aid of Immediate Access, to which the Defendants have filed no response. For the reasons and upon the conditions more fully outlined in the accompanying Memorandum Opinion contemporaneously entered herewith, the United States' Motion for an Order in Aid of Immediate Access is hereby GRANTED.



ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE

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MEMORANDUM OPINION

Presently pending before this Court is the United States' Motion for an Order in Aid of Immediate Access, to which the Defendants have filed no response. For the reasons and upon the conditions more fully outlined herein, the United States' Motion for an Order in Aid of Immediate Access is hereby GRANTED.

On January 4, 1994, the United States, on behalf of the United States Environmental Protection Agency ("EPA"), filed a Complaint pursuant to Section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. § 9604(e), seeking immediate access to the real property owned by Defendants, Ellis Saad and Kathy Saad ("the Saads"), for the purpose of conducting response actions necessary to address the release or threat of release of hazardous substances at the Saad Trousdale Road Site located at 3655 Trousdale Road, Nashville, Davidson County, Tennessee ("the site"), as illustrated in Appendix A to the Opinion, and more fully described in Appendix B to the Opinion. The Complaint also requests a civil penalty for

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compliance with Rule 58 and or Rule 79 (a)

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the Saads' alleged unreasonable failure to provide access as requested by the EPA.

On January 5, 1994, the United States filed a Motion for an Order in Aid of Immediate Access. To date, the Saads have not filed an Answer to the Complaint, nor a response to the presently pending Motion.

On April 7, 1994, the Court heard evidence and argument on the United States' Motion in Aid of Immediate Access. From April 1990 to August 1992, the EPA has conducted various testing and clean-up operations on the site. During this long period of erratic activity and unexplained results by the EPA, the relationship between the EPA and the Saads has deteriorated, with both blaming the other for violation of rights, breaches of agreements, and inordinate delays in resolving the problem. The evidence received by the Court establishes the following historical facts.

From approximately 1971 to 1983, the site was used as a waste oil reclamation facility. The samples taken from the site and adjacent to the site indicate the presence of hazardous substances, pollutants, contaminants, and waste oil containing hazardous substances both on the site and adjacent to the site.

The EPA has had access to the site periodically from April 1990 to August 1992. Some clean-up work has been completed, but EPA's reasons for the inordinate delays and erratic tests and demands are unclear and inexplicable.

The Court finds that there has been a release of hazardous substances at the site and that the United States has a reasonable

basis to believe that there may be a release or threat of release of a hazardous substance or a pollutant or a contaminant on the site. The Court finds further that the United States' demand for entry is not arbitrary or capricious, is not an abuse of discretion, and is otherwise in accordance with the law. The Court finds that access for an initial period of eight (8) months is appropriate given the circumstances of this case.

The Court ordered the Saads and the United States to meet and confer to discuss the nature, extent, and duration of the anticipated work at the site, and is advised that the parties so met and conferred on April 7, 1994 at the conclusion of the hearing. It appears, however, from the competing submittals filed by the parties, that little progress was made toward reaching an agreement as to the terms and conditions of permitting access to the site, and neither proposed order reflects the concerns expressed by the Court at the hearing. Rather, each such proposed order is overreaching and punitive as to the other party. This is another example of why so little has been accomplished in this case.

The United States has advised the Court that the EPA has begun the process of retaining a contractor to conduct, or to assist in the response actions at the site which may include: (1) soil and materials sampling and characterization to identify the type and extent of contamination; (2) geophysical studies to identify both the geology and location of perched water, free flowing water, and groundwater underlying the site; (3) dye trace testing to locate

the possible pathways of suspected contamination; (4) an engineering evaluation of the impact on the structural integrity of the railroad tracks which excavation or intrusive sampling may have on the embankment located beneath the CSX railroad tracks; and (5) the associated excavation and movement of soil and material.

The Court is also advised that the EPA may conduct the sampling and dye trace testing concurrently, and anticipates completion of this first phase, outlined above, within six (6) months from the date of this Order. Upon completion of the first phase of the activities outlined above, the Court is advised that the EPA will continue its ongoing assessment of the information in conjunction with the Saad Site Steering Committee to determine the extent of the cleanup and response action necessary. The EPA anticipates completion of this second phase, outlined above, within two (2) months of initiation.

The Court also is advised that, with the information currently available, the EPA anticipates that removal of approximately 3,000 cubic yards of contaminated material is necessary in addition to de-watering of the contaminated perched water. The EPA anticipates completion of this third phase, outlined above, within one (1) year from the time of initiation.

The Court recognizes that the activities to be conducted during the three phases, outlined above, may require modifications both to the nature of the necessary responses, and necessarily, the duration of time required to complete the activities.

Upon consideration of the pleadings, the Motion, and the entire record in this case, it is hereby ORDERED:

(1) The United States' Motion for an Order in Aid of Immediate Access is hereby GRANTED;

(2) The United States, or its officers, employees, or representatives, may immediately enter the site to determine the need for response or to effectuate a response action under CERCLA, 42 U.S.C. § 9601.

(3) Under the circumstances of this case, and in light of the Saads' evidence concerning an ongoing business at the site, the Court orders that access be granted for an initial period of eight months from the date upon which this Order is entered. This should provide the United States with sufficient time to complete the first two phases of its proposed operation on the site. At the completion of this eight-month period, EPA shall submit a summary of its results to the Court, along with its recommendations for remedial action and the estimated time for completion of the work. The parties shall then be required to return to the Court to discuss the progress of the work, the balance of the work to be done, and the anticipated date of completion.

(4) During the eight-month period provided herein, the Defendants shall be allowed access to the property for the purpose of conducting ordinary business activity. The Defendants and their agents or assigns, however, are hereby prohibited and enjoined from interfering or otherwise obstructing in any way, those activities

of EPA and its designees which are reasonably necessary to carry out the purposes of this Order.

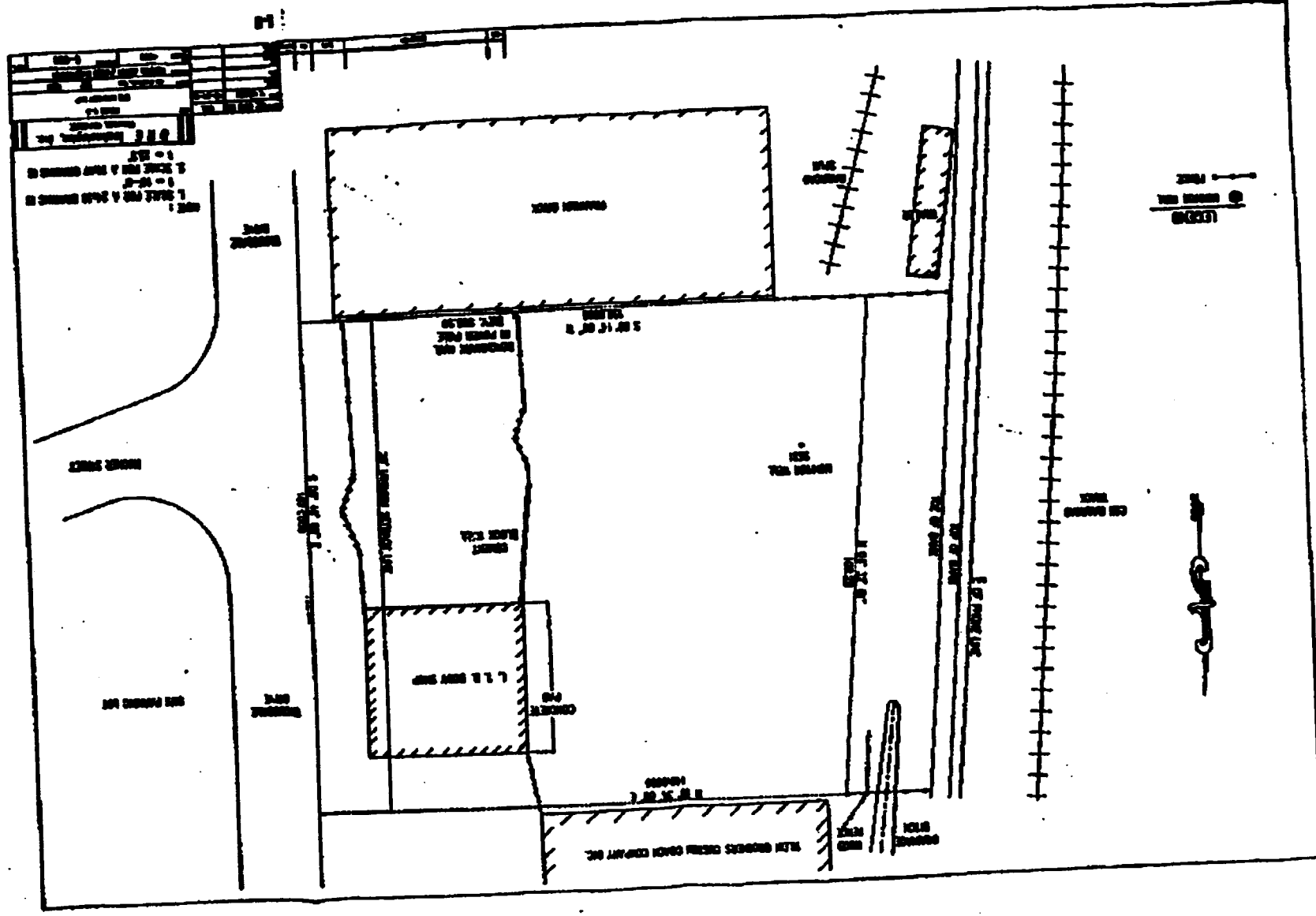
(5) The Defendants shall record this Order in the Register's Office, Davidson County, Tennessee, so that the property lien books shall reflect the rights and duties of the parties under this Order.

(6) The issue of penalties raised in the Complaint was not presented during the hearing. Therefore, the Court hereby RESERVES ruling on an assessment, if any, of a civil penalty in this case.

For purposes of this Order, the Saad Site Steering Committee, and their employees, agents, and representatives, are agents and representatives of the United States for the purposes of conducting response actions necessary to address the release or threat of release of hazardous substances at the Site.

IT IS SO ORDERED.


ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE



4.0 SCOPE

The scope of this investigation included the collection of groundwater samples from seven monitoring wells located in the area of the Saad Site. Water and sediment samples were also collected from a major spring located on the Croft farm.

5.0 DISCUSSION OF ANALYTICAL RESULTS

5.1 Croft Farm Spring

Water and sediment samples (SS-CSRS1-01W, 01S) were collected from the major spring located on the Croft Farm. The inorganic analysis performed on the sediment sample detected the presence of 15 metals (Table II), nine of which were listed as priority pollutants. The concentrations of the metals ranged from 70 ug/kg (cadmium) to 30,000,000 ug/kg (iron). As shown in Table III, only one organic compound was detected by the organic analyses performed on the sediment sample. Benzothiazolethione was reported present in sample at a concentration of 3,700 ug/kg.

Three metals were detected by the inorganic analysis performed on the water sample collected (Table IV). Boron (140 ug/l), manganese (1,600 ug/l) and iron (1,700 ug/l) were identified in the sample. No organic compounds were detected in the sample.

5.2 Monitoring Well SS-CF-MW-01 (Sample Code SS-CFMWRS1-01)

The inorganic analysis detected six metals and one inorganic compound present in the sample (Table IV). Two of the contaminants detected (cyanide and zinc) are listed as priority pollutants. The concentrations ranged from 16 ug/l (cyanide) to 5,700 ug/l (iron).

Twenty organic compounds were detected by the organic analyses performed

area located north of the Croft property. In 1968, L & N Railroad paid damages to the Croft farm for polluting the spring, which reportedly injured cattle that drank from the stream. Past sampling of the major spring by the Tennessee Water Quality staff has documented the presence of alkylated benzene, 1,1-dichloroethylene, chloroform, carbon tetrachloride and chlorobenzene. Additionally, the stream is aesthetically damaged by an orange colored precipitant thought to be related to an unnatural bloom of iron-fixing microflora. Museum and state officials desire to rid this spring of pollution to eliminate possible health risks to users of the planned park and to restore its natural appearance.

During August and September of 1982, FIT installed seven monitoring wells on and around the Saad Site. Five of the monitoring wells were installed on the Croft farm, adjacent to the Saad Site. The sixth well was placed on L & N property and the seventh well was drilled on the Saad Site. The locations of the monitoring wells are given in Figure 2. The data generated by the installation of the monitoring wells is given in the report submitted under TDD # F4-8204-06.

Two previous sampling studies were conducted during May and September of 1982. The first study (May, 1982) included the collection of water and sediment samples from streams and surface drainage routes in the area. The second study (September, 1982) consisted of the collection of groundwater samples from six of the seven monitoring wells. The results of both investigations are found in the report submitted under TDD # F4-8212-105.

3.0 OBJECTIVE

The objective of this investigation was to obtain samples that would aid in determining if seasonal fluctuations in the elevation of the groundwater table in the area would effect the migration of chemical contaminants below the Saad Site. Water level measurements showing slight seasonal fluctuations taken from the seven monitoring wells on two different dates are given in Table 1.